IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 5407 of 2004

Between:

Sarella Satyanarayana, S/o Basamayya,
M.P.T.C MEMBER of Kothapet Mandal, E.G.District, R/O Modekurru Village,
Kothapeta Mandal, East Godavari District.

..... PETITIONER

AND

1 Chikkala Venkateswararao, S/o Mutyalu, Cultivation,
R/o Chikkalavaripeta, Hamlet of Modekurru, Kothapet Mandal,
E.G. District.
2 District Collector,(Panchayat Wing),
East Godavari District, Kakinada.
3 Chief Executive Officer, Zilla Parishad, East Godavari District,
Kakinada.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate writ, order or direction, preferably a writ in the nature of Writ of Certiorari calling for the records relating to the Order dated. 11-3-2004 made in Election O.P.No. 25 of 2002 on the file of the Election Tribunal -cum-Senior Civil Judge's Court at Kothapet, East Godavari District, and to quash the same as being illegal, arbitrary, without jurisdiction, and violation of Art. 14 of the Constitution of India and also violative of provisions of A.P. Panchayat Raj Act and the Rules framed thereunder and consequently suspend the said Order.

Counsel for the Petitioner:MR.N.Subba Reddy for Mr.T.V.S.PRABHAKARA RAO

Counsel for the Respondent No.1 : MR.M.LAKSHMANA SARMA

Counsel for Respondent Nos.2 & 3: G.P. for Panchayatraj.

The Court made the following :

O R D E R :

The petitioner was elected as Mandal Parishad Territorial Constituency (MPTC) Member of Kothapet Mandal, in the election held on 22.6.2001. First respondent herein filed Election O.P. being E.O.P.No.25 of 2002 under Sections 19 (3) and 156 (2) of Andhra Pradesh Panchayat Raj At, 1994 ('the Act' for brevity) alleging that the petitioner herein incurred disqualification for being continued as Member of MPTC a s third child was born on 20.10.2001. The petitioner herein opposed the said election O.P. *inter alia* contending that the Court of Senior Civil Judge-cum-Election Tribunal has no jurisdiction to decide the qualification of the petitioner and that the Election Tribunal has jurisdiction only to enquire into the election irregularities. The learned Senior Civil Judge by impugned order dated 11.3.2004 allowed E.O.P.No.25 of 2002 directing respondents 2 and 3 herein to conduct elections for the office of Member of MPTC, Kothapet. Aggrieved by the same, the petitioner moved this Court under Article 226 of the Constitution of India.

This Court while admitting the writ petition on 26.3.2004 by an order made in W.P.M.P.No.7048 of 2004 staying the election directed by the learned Senior Civil Judge. First respondent in the writ petition filed W.V.M.P.No.2491 of 2004 and at that stage itself the writ petition is heard finally with the consent of the parties.

Learned counsel for the petitioner Sri N.Subba Reddy submits that if a person is aggrieved by the election, such person has to file an Election Petition before the Election Tribunal-cum-Senior Civil Judge, within a period of thirty (30) days from the date of declaration of results of the election. Reliance is placed on Rule 3 (i) of Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (hereafter called 'the Rules'). Secondly, it is the contention of the learned counsel for the petitioner that if the impugned order is considered as one passed under Section 22 (1) of the Act, the learned Senior Civil Judge has no power or jurisdiction to give a decision as to the question whether the Member of MPTC is not qualified or has become disqualified under Sections 17 to 20 read with Section 156 (2) of the Act.

Per contra, the learned counsel for the first respondent submits that the rule of limitation has no application insofar as elected member incurring disqualification as it is a continuing disqualification. According to the learned counsel, knowledge of such disqualification is relevant and that first respondent invoked the jurisdiction of the Senior Civil Judge, immediately after coming to know of the disqualification incurred by the petitioner. Insofar as the power of the Senior Civil Judge to give a

decision under Section 22 of the Act is concerned, learned counsel for the petitioner does not seriously dispute the legal position.

Insofar as first submission of the learned counsel for the petitioner is concerned, there is force. As per Section 233 of the Act, an election held under the Act can be challenged by way of an election petition presented to such authority and in accordance with the rules that were prescribed. In exercise of the powers conferred under Section 268(1) read with Section 233 of the Act, the Governor promulgated the rules above referred to. Under Rule 2 of the Rules, any candidate or elector may present an election petition to appropriate Election Tribunal. Rule 3 of the Rules prescribes a period of thirty days from the date of declaration of results, within which period the election petition has to be presented to the competent Election Tribunal. Under Rule 12 of the Rules, the Election Tribunal is empowered to declare the election of a Returned Candidate to be void, if in the event of the Election Tribunal, a Returned Candidate was not qualified or was disqualified or the election of a Returned Candidate is vitiated by any one of the irregularities, which materially affects the results of the Returned Candidate. As Rule 12 of the Rules is couched in past tense, *ex-facie* the same has no application if an elected or Returned Candidate becomes disqualified after the election is held. That is to say, any disqualification for the purpose of Section 233 of the Act read with the Rules shall have to be with reference to the date of election. Any disqualification of a Returned Candidate after the date of election cannot be a subject matter of an election petition under Section 233 of the Act. Therefore, election petition itself was not maintainable, as admittedly first respondent alleged that the writ petitioner incurred disqualification by reason of a fact that a third child was born on 20.10.2001, whereas the election was held on 22.06.2001.

Section 22 of the Act contains the procedure for obtaining decision of the competent authority as to whether an elected member has become disqualified under Sections 17 to 20 of the Act. Going with the language employed in Section 22 of the Act, in a given case, it is also permissible for a voter or authority to question the qualifications of an elected member even though the election petition is not preferred. Be that as it is, in case an elected candidate allegedly incurs a disqualification after the election is concluded, one has to follow the procedure under Section 22 of the Act and obtain a decision from the competent authority.

Section 22(1) of the Parent Act reads as under:

22. Authority to decide questions of disqualifications of members:- (1) Where an allegation is made that any person who is elected or nominated as a member of a gram Panchayat is not qualified or has become disqualified under Section 16, Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and executive authority have given intimation of such allegation to the member through the

District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Munsif having jurisdiction over the area in which the office of the gram Panchayat is situated, for decision.

By A.P.Panchayat Raj (Amendment) Act, 2002 (Act No.22 of 2002) the words 'District Munsif' in sub-section (1) of Section 22 was substituted and the words 'District Court" were inserted. The amendment came into force with effect from 20.6.2002. After that, Section 22(1) reads as under:

22. Authority to decide questions of disqualifications of members: - (1) Where an allegation is made that any person who is elected as a member of a Gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19, or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the Gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which the office of the Gram Panchayat is situated for decision.

Therefore, with effect from 20.6.2002, if any decision is to be taken as to the qualification or disqualification of an elected candidate in relation to Sections 17 to 20, it is only the District Judge, having jurisdiction over the area in which the office of the Gram Panchayat is situated, who is competent to give a decision. In this case, the Election O.P., was filed before the learned Senior Civil Judge, Kothapet on 25.07.2002. Thus the Election Tribunal exercised jurisdiction, which does not vest in it. This renders the impugned order void and *non-est.* Therefore, the only remedy first respondent has, is to proceed under Section 22 of the Act. Liberty is given to first respondent to do so.

The writ petition, subject to above observation, is allowed. There shall be no order as to costs.

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(V.V.S.RAO, J.)

28-09-2004.

sh/Msr

To

1. District Collector,(Panchayat Wing),
   East Godavari District, Kakinada.
2. Chief Executive Officer, Zilla Parishad, East Godavari District,
   Kakinada.

3. The Election Tribunal cum Senior Civil Judge, Kothapet,East Godavari District.

4. 2CCs to the G.P for Panchayat Raj, High Court Buildings, Hyderabad.
5. 2CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.5407 of 2004

28-09-2004.